In the High Court for the States of Punjab and Haryana at Chandigarh

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C.W.P. No. 3550 of 1990

Date of decision: 9.11.2011

Risal Singh and others ..Petitioners

Versus

The State of Haryana and others ..Respondents

Coram: **Hon'ble the Acting Chief Justice**
Hon'ble Mr. Justice Rajiv Narain Raina

Present: Mr. Arun Jain, Sr. Advocate
with Mr. Amit Jain, Advocate
for the petitioners.
Mr. Kamal Sehgal, Addl. A.G.Haryana
for the respondents.

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1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest?

Rajiv Narain Raina,J.

1. The present petition filed under Articles 226/227 along with five connected petitions*, are directed against the land acquisition notification No. LAC(G)-88/97 dated 26.12.1988 under Section 4 of the Land Acquisition Act,1894 and the declaration vide notification No. LAC (G)/NTLA-89/150 dated 22.12.1989 under Section 6 of the Land Acquisition Act, 1894 (for short, the "**ACT**"). Before we deal with the notifications under challenge in these petitions, it would be apposite to narrate in brief a few material facts prior to the notification under challenge which have bearing on the present case as culled from *CWP No.3550 of 1990- Risal Singh and others v. The State of Haryana and others*.

2. On 4.11.1981, State Government had issued a notification under

Section 4 for acquisition of land in dispute covering a total area of 812.12 acres which included the land of the petitioners and the petitioners in the connected petitions. The public purpose for that acquisition was to develop the land for residential area carving out Sectors 1, 2 and 3 at Rohtak. Subsequently, the declaration under Section 6 was issued on 24.2.1984. Since both the notifications were prior to the 1984 amendment of the Act, it was legal and valid then to issue a declaration under Section 6 up to 3 years from the date of Section 4 notification. It appears that the land owners then represented to the Chief Minister, Haryana against the acquisition. It is stated in para 7 of the petition that the Chief Minister had acceded to the request of the land owners and directed that the land on which residential buildings/houses of the petitioners had been constructed should not be acquired. This decision of the Chief Minister was conveyed to the Director, Town and Country Planning, Haryana who further conveyed the order to Director, Urban Estates, Haryana and the matter was dropped and Section 6 notification was allowed to lapse with effect from 23.9.1986 (P-3 dated 19.9.1986) with the condition that fresh notification under Section 4 may be issued after holding an inquiry in consultation with the District Town Planner following a meeting held on 24.7.1996. It was decided vide Annexure P-4 dated 24.9.1986 that if it is found that land lying vacant has been sold in the shape of plots and it does not fit in the planning of HUDA, in that case, it will be of no use to notify the same for acquisition. It was also a stipulation that a clear report be submitted as to how many houses had already been constructed in the area and to identify the owners of the lands which were then lying vacant.

3. Since no fresh notification was issued after lapse of the first acquisition the petitioners aver that they remained sanguine that their land would remain in their use and ownership and with that implied assurance many land owners raised further constructions on their land involving huge expenditure. This is where the first chapter of the story ends.

4. All of a sudden, State Government issued a fresh notification under Section 4 dated 26.12.1988 again setting in motion the process of acquisition of the land upon which large number of constructions in the shape of residential buildings existed. The petitioners filed objections under Section 5-A praying that their constructions be left out. It is stated that on the date of the second Section 4 notification for acquisition of 479.84 acres, there were approximately 300 built up houses in the area in question and that any move to acquire the land would resound in a humanitarian problem which would lead to *enmass* uprooting rural folk including the petitioners who had made the area their homestead prior to the notification under Section 4. The public purpose of the acquisition was to utilize the land for residential and commercial areas falling in Sector 3, Rohtak under the HUDA Act, 1977 by HUDA in the area of village Bohar HB 68 Tehsil and District Rohtak. The objections of the land owners including the petitioners did not find favour with the Land Acquisition Officer and the Section 6 notification came to be issued on 22.12.1988 declaring an area of 317.47 acres was required for acquisition in which the land/buildings of the petitioners fell. Since the notification under Section 4 of the Act was for 479.84 acres, the declaration under Section 6 was issued qua 317.47 Acres, therefore about 150 acres was left out of the acquisition. This lacuna was sought to be filled by the State Government by issuing a corrigendum notification dated 8.3.1990 where 317. 47 acres was increased to 367.47 acres. In this manner about 50 acres was added in which the land and houses of the petitioners was situated. In the affidavit filed by Satbir Singh, Land Acquisition Collector, Urban Estate, Haryana in compliance of this Court's order dated 11.7.2011, it has been stated that 33 land owners namely, Daya Singh and others had represented to the Director, Urban Estates on 19.3.1990 that their residential houses on the land owned by them if acquired would be to their detriment and cause undue hardship. The request of the land owners was approved by the Government on 17.4.1990. It has been further

stated in the affidavit that a total land measuring 26.99 and 6.91 acres has been withdrawn under Section 48 of the Act vide notification dated 22.6.1990 and 1.4.1992 being the land which was notified under Section 6. In the affidavit, the details of Rectangle, Killa and Khasra numbers has been set out as also the name of persons whose land stood released after completion of the process of acquisition. It is relevant to notice that award No. 4 dated 29.3.1990 and award No.18 dated 25.3.1991 had come into existence. A map of the area has been annexed showing substantial area of 26.99 acres of land released on 17.4.1990 after passing of the awards left out after Section 5-A notification and the substantial area of 6.91 acres which was also released. The petitioner filed Civil Misc. No. 8701 of 2011 in the present proceedings pointing out that the area in question is by now a developed colony where various amenities stood provided by the respondent-authorities. It has been further pointed out that area of some land owners has been released who did not even choose to file objections under section 5-A. A letter of the Director, Urban Estates Department, Haryana to the Estate Officer, HUDA dated 27.8.1983 has been placed on record (P-13) that 4 marlas of land comprised in Khasra No. 173//9/2 had been decided to be released as there was construction of Samadhi, Havan Kund, Piao and Sat Sang Hall on the land. Another letter dated 17.3.1988 (P14) of the District Town Planner, Rohtak to State Town Planner, Hissar deals with a request of 68 residents of the disputed area in Sector 3 who had represented to the Minister, Town and Country Planning Department, Haryana consequent upon which the matter was ‘studied’ and a detailed report is contained in this letter. It was reported that the constructions of the 68 land owners was not in a compact block but in different khasra numbers, that is, approximately in all the khasra numbers and the adjoining area had already been released from acquisition by HUDA. It has been noticed that this area in question is also under writ proceedings since long and no lay out plan of this area had been drawn. Therefore, a

recommendation was made to the Government to consider release of land from acquisition. A similar request was recommended for release vide letter dated 15.6.2006 (P15) from District Town Planner, Rohtak to the Administrator, HUDA, Hissar for release of land of one Shri Surat Singh Nandal.

5. Mr. Arun Jain learned Senior Counsel unfolded before us the facts of the case and argued that this was eminently a fit case for quashing the impugned notifications under sections 4 and 6 of the Act. He brought to our notice the contents of para 14 of the writ petition, which read as under:-

> **"That subsequently a large parcel of land which was covered under residential houses could not be utilized for planned development of Sector 3 was left out. This land included the land of the petitioners mentioned above. A notification was prepared in the office and was sent for publication to the Government Press. Under this notification, land measuring 317.47 acres of land was to be acquired and to be included in the Section 6 of the Act's notification. However, for extraneous and irrational reasons, the notification sent for publication was recalled by the respondents and 50.3 acres of additional land was added with pen on the notification to be sent for publication to the press. The area sought to be acquired reflected in Section 6 notification, therefore, increased to 367.50 acres but since the numbers were subsequently added, as such, the notification still reflects area in acres in column No.4 as 317.47 Acres."**

6. In the written statement filed by Mr. R.K. Kazal, Land Acquisition Collector, Urban Estates, Haryana, Hissar on behalf of the respondent-State, there is a damaging admission, which reads as follows:-

> **"That para No.14 of the writ petition is wrong and hence denied. It is submitted that the total acquired land under Section 6**

was 367.50 acres but it was wrongly published the area 317.47 acres which was rectified vide corrigendum No. LAC(G)-90/NTLA/187 dated 8.3.90. It is further submitted that those khasra numbers measuring land 50.3 acres were not typed and were added with pen."

7. In the circumstances, we called for the original record of the notification under Section 6 dated 22.12.1989. On perusal of the original record, we were confronted with numerous hand written entries of khasra numbers which are undated and unsigned. On the last page on the left margin of the notification it is only the typed part which is signed by the Joint Secretary to Government of Haryana, Urban Estates Department Haryana, Chandigarh. Learned senior counsel submitted that the land of his clients was roped in into acquisition by this illegal and unlawful process. Government can speak only in writing, formally and by notifications. The land acquisition law being ex-proprietary, it deserves strict construction. We find merit in the submission and the view canvassed by him is legally sound that the notification under section 6 deserves to be quashed.

8. Mr. Kamal Sehgal, learned Additional Advocate General, Haryana was at a loss to explain the authenticity and genuineness of the hand written khasra/khewat numbers on the left margin of the notification or who was its author.

9. Mr. Arun Jain learned Senior Advocate read the substantive provision contained in Section 6 of the Act that when any particular land is needed for a public purpose, **"declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders."** The hand written parts on the last page of the notification does not stand the test of Section 6 and cannot be taken as a part of it, especially when no corresponding noting regarding insertion of Khasra numbers in question have been produced signed by the Secretary or any authorized delegate of the Government. The precious rights of land owners

cannot be defeated by sleight of hand. Learned senior counsel next argued that the lands of similarly situated land owners were released from time to time and at least up to 2005 and that therefore, discrimination was writ large and there was infraction of Article 14. He relied upon a recent judgment rendered by the Hon'ble Supreme Court in **Hari Ram** Versus **State of Haryana and others** reported in 2010(3) SCC 621 where the test of non discrimination has been introduced into the law of land acquisition in respect of State Government's power under Section 48 of the Act to release certain lands from acquisition. The land owners who are similarly situated have right of similar treatment by the State Government in respect of the same acquisition proceedings. The facts in *Hari Ram's* case (supra) are somewhat similar to the facts of the present case. We may quote with profit para No.24 of the judgment which reads as under:-

> **"As a matter of fact, lands of more than 40 landowners out of the same acquisition proceedings have been released by the State Government under Section 48 of the Act. Some of the release orders have been passed in respect of landowners who had not challenged the acquisition proceedings and some of them had challenged the acquisition proceedings before the High Court and whose cases were not recommended by Joint Inspection Committee for withdrawal from acquisition and whose writ petitions were dismissed. Some of these landowners had only vacant plots of land and there was no construction at all. In most of these cases, the award has been passed and, thereafter, the State Government has withdrawn from acquisition. It is not the case of the respondents that withdrawal from acquisition in favour of such landowners has been in violation of any statutory provision or contrary to law. It is also not their case that the release of land**

from acquisition in favour of such landowners was wrong action on their part or it was done due to some mistake or a result of fraud or corrupt motive. There is nothing to even remotely suggest that the persons whose lands have been released have derived the benefit illegally. As noticed above, prior to October 26, 2007, the State Government did not have uniform policy concerning withdrawal from acquisition. As regards the guidelines provided in the letter dated June 26, 1991, this Court has already held that classification on the basis of nature of construction cannot be validly made and such policy is not based on intelligible differentia and a rational basis. What appears from the available material is that for release of the lands under the subject acquisition, no policy has been adhered to. This leads to an irresistible conclusion that no firm policy with regard to release of land from acquisition existed. It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true that a landowner whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition but where the State Government exercises its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have right of similar treatment by the State Government. Equality of citizens' rights is one of the fundamental pillars on which edifice of rule of law rests. All actions of the State have to be fair and for legitimate reasons.

The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power under Section 48 of the Act in respect of persons similarly situated relating to same acquisition proceedings and for same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory. More so, it is not even the case of the respondents that release of land from acquisition."

10 The above principles have been further elaborated by the Hon'ble Supreme Court in its landmark judgment in **Bondu Ramasawamy and others** Versus **Bangalore Development Authority and others** (2010)7 SCC 129. A road map has been laid down for State Government and development authorities and the principles to follow in acquiring land under the Act and that the prevailing system of acquisition of land needs an overhaul. To begin with, there is absence of proper or adequate survey and planning before embarking upon acquisition; notifying areas to start with far larger than what is required for acquisition and then making arbitrary deletions and withdrawals from acquisition. The four other vital areas delineated in the judgment which have been identified where government would have to step in, are not being referred to here as those issues do not arise in the present case.

11 Mr. Arun Jain has also sought to buttress his argument against the acquisition by pointing out that there was no development plan or survey done at

the initial stage to rope in substantial constructions of the petitioners made prior to notification under Section 4. He relied upon a Division Bench judgment of this Court sounding the clarion call to all the Land Acquisition Collectors and officers of the Town and Country Planning Department and other statutory bodies like HUDA and HSIIDC to make comprehensive surveys before sending proposal to the Government before issuing notifications under Section 4 of the Act. The relevant part reads as under:-

"The respondent State of Haryana is directed to issue comprehensive instructions to all the Land Acquisition Collectors of the State, Officers of the Town and Country Planning Department, various agencies like HUDA, HSIIDC or others to undertake a comprehensive survey before sending the proposal to the Government for issuance of notifications under Section 4 of the Act. The concerned officers are to ensure that clause 2 of the policy of the State, dated 26.10.2007 for releasing the structures, which have been built up prior to issuance of notification under Section 4 of the Act are not included in the proposal for acquisition. Such instructions would bring proximity between law, life and justice which look to be distant neighbours in the present scenario. It would avoid unnecessary harassment to the general public who might have constructed small houses on the land proposed to be acquired. It would also discourage the construction activity after issuance of notification under Section 4 of the Act or the tendency of some unscrupulous element to claim that the building was constructed prior to issuance of notification under Section 4 of the Act. These steps in turn would reduce the disputes between the general public and the State paving the way for developing peaceful society and avoiding litigation."

12. On the issue of discrimination as well the lands and buildings of the petitioners deserve to be protected by the manner in which lands of similarly situated landowners was released after acquisition in 1988, after coming into existence of awards of 1990 and from time to time even after 15 years till 2005.

We see no useful public purpose will be served in upholding the notifications at this distance of time particularly when the petitioners have had the protection of interim orders of this court staying dispossession. We would confirm those orders.

13. In view of the above discussion and drawing strength from the aforesaid judgments, we hold that the impugned notifications under Sections 4 and 6 deserve to be quashed. We order accordingly.

14. This writ petition and the connected writ petitions are allowed and the impugned notifications under Sections 4 and 6 are quashed qua the petitioners.

(M.M.KUMAR)
ACTING CHIEF JUSTICE

(RAJIV NARAIN RAINA)
JUDGE

November 9th,2011
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Serial No.	Civil Writ Petition No.	Title
1	3550 of 1990	**Risal Singh and others** v. **The State of Haryana and others**
2	3867 of 1990	Maha Anand Versus The State of Haryana and others
3	3889 of 1990	Ms. Kanta Devi and others Versus The State of Haryana and others
4	5066 of 1990	Ms. Raj Kumari and others Versus The State of Haryana and others
5	16105 of 1990	Raghbir Singh and others Versus The State of Haryana and others
6	16176 of 1990	Bhagwn Singh and others Versus The State of Haryana and others

M.M.KUMAR)
ACTING CHIEF JUSTICE

(RAJIV NARAIN RAINA)
JUDGE

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